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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN MICHAEL DUVAUCHELLE,

Defendant and Appellant.

A148980

(Solano County  
Super. Ct. No. FCR321969)

Defendant Brian Michael Duvauchelle appeals from an order revoking his parole and ordering him to serve 180 days in custody with a possible release after 120 days if a placement was available at a residential substance abuse treatment facility.<sup>1</sup> The court found that defendant had violated two conditions of his parole: failure to attend a sex-offender treatment program and failure to comply with the directive to report for drug treatment. Defendant was then on parole from a two-year prison sentence imposed for evading a peace officer in violation of Vehicle Code section 2800.2, subdivision (a). Previously, in 1993, he had been convicted of rape. He appeals from the present order on the ground that the court incorrectly understood that sex-offender treatment was a mandatory condition of his parole, whereas Penal Code section 3008 makes such a provision mandatory only when placed on parole for an offense that requires registration

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<sup>1</sup> The challenged order was entered on July 8, 2016, so that the matter may well be moot at this late date. Nonetheless because inexplicable delays in the processing of the appeal are not attributable to defendant or his counsel, we deem it advisable to resolve the appeal on the merits.

as a sex offender pursuant to Penal Code sections 290 to 290.23. Defendant is correct that sex-offender treatment was not a mandatory condition upon his release on parole for the Vehicle Code violation. (Pen. Code, § 3008, subd. (d).) Nonetheless, while the Department of Corrections and Rehabilitation may or may not have had discretion to impose that parole condition even if not mandatory (see Pen. Code, § 3008, subd. (a)), such treatment was in fact imposed as a condition of defendant's parole and defendant agreed to abide by that condition at the time of his release. The Attorney General correctly argues that defendant failed to administratively appeal the imposition of that condition (*In re Hudson* (2006) 143 Cal.App.4th 1, 7) and may not do so when cited for its violation. The Attorney General does not suggest that there was an administrative remedy from the parole violation that defendant failed to exhaust, as defendant argues in his reply brief, but that the proper means to challenge the treatment condition was an administrative appeal from the department's imposition of the condition. Having failed to challenge imposition of the condition, he may not do so when cited for its violation.

In all events, defendant does not challenge the finding that he also violated the other parole condition that he report for drug treatment. This finding alone was sufficient to uphold the order revoking his probation.

The order revoking defendant's probation is affirmed.

Pollak, P.J.

We concur:

Streeter, J.

Tucher, J.